(3)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CIVIL REVISION NO. 47 /2006

APPLICANTS :1. Sardar Satpal Singh
Aged about 50 years, S/o. Late Sardar Vidayal Singh Babra

NON-APPLICANTS

2. Sardar Iqbal Singh
Aged about 45 years, S/o. Late Sardar Vidayal Singh Babra

3. Sardar Gurupal Singh
Aged about 42 years, S/o. Late Sardar Vidayal Singh Babra
All R/o. Church Road, Kedarpur, P.S. & Tahsil Ambikapur, Dist. Sarguja (C.G.)

P.R. No. 3/6/06 Presented by Shri Rajeev Tiwari dated 3/6/06

VERSUS

NON-APPLICANT/ APPLICANT : Jainath Shukla
S/o. Shiv Bihari Shukla
Aged about 65 years
Occupation- Retd. Government Servant, R/o. Ambikapur,
Present Address Civil Lines Dongargarh, District Rajnandgaon (C.G.)

CIVIL REVISION UNDER SECTION 23-E OF THE CHHATTISGARH ACCOMMODATION CONTROL ACT

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Civil Revision No. 47/2006

Sardar Satpal Singh and two others

Vs.

Jainath Shukla

Post for Order: 27.02.2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Before: Hon'ble Shri Justice Dilip Raosaheb Deshmukh

Civil Revision No.47/2006

Sardar Satpal Singh and two others

Vs.

Jainath Shukla

Shri A.K.Prasad, Counsel for the applicants/non-applicants.
Shri M.P.S. Bhatia, Counsel for the respondent.

O R D E R

(Passed on this 27th day of February 2007)

Being aggrieved by an order dated 24.3.2006 passed in case No. 5/ब-121/2001-2002 by the Rent Controlling Authority (hereinafter referred to as the R.C.A.), the applicants/tenants have preferred this Revision under Section 23-C of the Chhattisgarh Accommodation Control Act (hereinafter referred to as the Act).

2. Brief undisputed facts are that the non-applicant herein is the landlord of the accommodation in question in the city of Ambikapur and falls within the category of Section 23-J of the Act since retired from the Government service and has no other reasonably suitable residential accommodation of his own in his occupation in Ambikapur. In the aforesaid proceedings, the R.C.A. had passed an *ex parte* order of eviction of the tenants/ applicants herein. Vide order dated 20.07.2005 passed in W.P.No. 1784 of 2005, the *ex parte* order dated

(36)

02.01.2005 was set aside and the R.C.A. was directed to proceed with the application of the respondent/landlord from the stage when the R.C.A. had proceeded *ex parte* against the tenants/applicants herein. Parties were directed to appear before the R.C.A. on 01.08.2005. It is also not disputed that the tenants/applicants herein appeared before the R.C.A. on 01.08.2005 but did not, at any time thereafter make an application under Section 23-C of the Act for leave to contest the application under Section 23-A of the Act filed by the landlord/respondent herein. The tenants/applicants straightaway filed a written statement on 22.08.2005 which was taken by the Rent Controlling Authority on record without granting leave to the applicants/tenants under sub-clause (2) of Section 23-C of the Act and after giving an opportunity of hearing and for adducing evidence to the parties, the R.C.A. passed the impugned order for eviction of the tenants by allowing the application under Section 23-A of the Act filed by the landlord.

3. During the hearing of this revision, Shri M.P.S.Bhatia, learned counsel for the non-applicant/landlord raised a pure question of law that since the tenants did not file any application under Section 23-C of the Act duly supported with an affidavit within 15 days from the date of appearance i.e. 01.08.2005, the statement made by the landlord in the application for eviction under Section 23-A of the Act was deemed under law to be admitted by the tenants and the order for eviction of the tenants passed by the R.C.A. could not be questioned in this revision under Section 23-E of the Act by the tenants due to non-compliance of the mandatory provision of Section 23-C of the Act.

(37)

4. Shri A.K.Prasad, learned counsel for the applicant argued that since in the proceedings under Section 23-A of the Act, no summons was served on the tenants/applicants herein in the form specified in the second schedule, the tenants were not under an obligation to file an application under Section 23(C) of the Act. It was urged that the tenants/applicants filed a written statement on 22.08.2005 which was neither objected by the landlord/non-applicant herein nor by the R.C.A. The fact that the R.C.A. proceeded to hear the matter after giving an opportunity of hearing and also for leading evidence to both the parties and decided the application under Section 23-E of the Act thereafter leave under Section 23-C of the Act could be deemed to have been granted by the R.C.A. to the tenant to contest the application under Section 23-A of the Act. Reliance was placed on *Surendra V. Ranjeet Naraen*[1], *Ram Sirsath V. Rent Controlling Authority, Bhopal*[2], *Gopal Chandra Das V. Smt. Saraswati Basak*[3] and *John Impex (P) Ltd. V. Surinder Singh And Others*[4].

5. The only point which requires consideration in this revision is whether on account of an application under Section 23-C of the Act duly supported by an affidavit not having been filed by the tenants within 15 days from the date their appearance or at any time thereafter before the R.C.A., the order of eviction passed by the R.C.A. is not open to challenge by the tenants on the ground that the landlord did not require the accommodation bona fide for his residence.

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1. 1998-II M.P.W.N. 208
2. 1999(I) M.P.W.N. 76
3. AIR 2003 NOC 298(Calcutta)
4. (2003) 9 Supreme Court Cases 176

(28)

6. Chapter III-A of the Act deals with eviction of the tenant on ground of "bona fide" requirement. Section 23-A is a special provision for eviction of tenant on ground of bona fide requirement. A landlord falling under any of the categories mentioned in Section 23-J of the Act, may submit an application under Section 23-A of the Act for an order directing the tenant to put the landlord in possession of the accommodation on grounds of bona fide requirement either for residential purpose or for non-residential purpose. Section 23-B requires that the R.C.A. shall issue a summons to the tenant in the form specified in the second schedule on an application under Section 23-A being filed. In the present case, since the tenants/applicants herein were erroneously proceeded *ex parte* by the R.C.A., the said order was set aside in W.P. No. 1784 of 2005 vide order dated 20.07.2005 directing the parties to appear before the R.C.A. on 01.08.2005. In this view of the matter, upon a direction being given by the High Court to the parties to appear before the R.C.A. on 01.08.2005, the R.C.A. was not under an obligation to issue summons to the tenants in relation to the application under Section 23-A of the Act.

7. Section 23-C of the Act reads as under:

> **23-C. Tenant not entitled to contest except under certain circumstances.**---(1) The tenant on whom the summons is served in the form specified in the Second Schedule shall not contest the prayer for eviction from the accommodation unless he files within fifteen days from the date of service of the summons, an application supported by an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Controlling Authority as hereinafter provided and in default of his appearance in pursuance of the summons or in default of his obtaining such leave, or if such leave is refused, the statement made by the

(39)

landlord in the application for eviction shall be deemed to be admitted by the tenant. The Rent Controlling Authority shall in such a case pass an order of eviction of the tenant from the accommodation:

Provided that the Rent Controlling Authority may, for sufficient cause shown by the tenant, excuse the delay of the tenant in entering appearance or in applying for leave to defend the application for eviction and where "*ex parte*" order has been passed, may set it aside.

(2) The Rent Controlling Authority shall, within one month of the date of receipt of application, give to the tenant, if necessary, leave to contest the application, if the application supported by an affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in Section 23-A.

The provision contained in Chapter III-A provides a speedy remedy to a landlord falling within the category mentioned in the Section 23-J of the Act to seek eviction of the tenant on grounds of "bona fide" requirement. Therefore, under Section 23-C, the tenant was under an obligation to file an application duly supported by an affidavit stating the grounds on which he sought to contest the application for eviction within fifteen days from date of service of summons or, in the peculiar facts of this case, within fifteen days from the first appearance of the tenant before the R.C.A. upon an order being passed by the High Court in W.P.No.1784 of 2005 on 20.07.2005.

8. The proviso to sub-clause (1) of Section 23-C authorizes the R.C.A. to excuse the delay of the tenant in entering appearance or in applying for leave to defend the application for eviction and also to set aside an *ex parte* order which has been passed upon sufficient

40

cause being shown by the tenant. In this case no such application duly supported by an affidavit was filed by the tenant at any time during the proceedings before the R.C.A.

9. A plain reading of sub-clause (1) of Section 23-C clearly goes to show that unless the tenant files an application duly supported with an affidavit stating the ground on which he seeks to contest the application for eviction and obtains leave from the R.C.A., as provided in sub-clause (2) of Section 23-C, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and in such a case the R.C.A. shall pass an order for eviction of the tenant.

10. Sub-clause (2) of Section 23-C of the Act also reveals the clear intention of the Legislature that the R.C.A. is also under an obligation to pass orders on the application filed by the tenants under sub-clause (1) of Section 23-C of the Act within one month of the date of receipt of the application. An order refusing to grant leave to the tenant, since merges with the order of eviction, would also be open to challenge under Section 23-E of the Act in Revision before the High Court. Since the words used by the Legislature in Section 23-C are clear and unambiguous a meaning different than what was intended by the Legislature could not be attributed. In this case, the tenants upon appearance before the R.C.A. on 01.08.2005 did not file any application duly supported with an affidavit for leave to contest the application for eviction. The tenants also did not file any application under the proviso to sub section (1) of Section 23 of the Act before the R.C.A. In this view of the matter, there is no room for any doubt that the provision under Section 23-C of the Act being mandatory in

(41)

nature, since the tenants did not make any application supported with an affidavit under Section 23-C (1) of the Act, the R.C.A. ought to have straightaway proceeded to pass an order for eviction of the tenant from the accommodation under Section 23-C (1) of the Act. The mere fact that the R.C.A. in serious contravention of the provision contained in Section 23-C of the Act, took the written statement of the tenant on record and gave opportunity of hearing and to lead evidence to the parties could in no manner be construed to be sufficient compliance of the mandatory provision contained in Section 23-C of the Act by the tenant. I have gone through the case law cited by the learned counsel for the applicant. None of the case law cited deals with the question in issue and applies to the peculiar facts of the case. The only ground raised by the applicants herein in the written statement filed on 22.08.2005 was that the non-applicant should continue to live with his son at Dongargarh so that he is well taken care of and not separately at Ambikapur. This ground, in my considered opinion, could, in no case, be said to be a ground to permit the applicants/tenants to contest the application under Section 23-A of the Act filed by the non-applicant/landlord herein.

11. The tenants/applicants herein thus having failed to make an application under Section 23-C of the Act for leave to defend cannot question the propriety of the impugned order passed by the R.C.A. under Section 23-A of the Act in favour of the landlord/non-applicant.

12. In this view of the matter, the impugned order dated 24.03.2006 passed by the R.C.A. cannot be questioned by the tenants on the ground that the bona fide requirement of the landlord was not

42

established since under sub-clause (1) of Section 23-C of the Act, in the absence of an application filed by the tenants for leave to contest the application under Section 23-A of the Act, the statement made by the landlord in the application under Section 23-A of the Act shall be deemed to be admitted by the tenants and the R.C.A. was under an obligation to pass an order of eviction of the tenants from the accommodation.

13. In the result, this revision being devoid of merit is dismissed. There shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge